



**BOARD ACTION MEMORANDUM**

**TO:** NCUA Board

**DATE:** May 16, 2008

**FROM:** Robert M. Fendler  
General Counsel

**SUBJ:** Proposed Amendments  
to Chartering and Field  
of Membership Manual  
(IRPS 08-2)

**ACTION REQUESTED:** NCUA Board approval to publish, for a 60-day comment period, the attached proposed rule amending NCUA's Chartering and Field of Membership Manual, Interpretive Ruling and Policy Statement (IRPS) 08-2.

**DATE ACTION REQUESTED BY:** May 22, 2008

**OTHER OFFICES CONSULTED:** Regional Offices, Office of Examination and Insurance, and Office of Small Credit Union Initiatives.

**VIEWS OF OTHER OFFICES:** Concur.

**BUDGET IMPACT, IF ANY:** None.

**SUBMITTED TO INSPECTOR GENERAL FOR REVIEW:** Yes

**RESPONSIBLE STAFF MEMBERS:** Steven W. Wideman, Trial Attorney, Office of General Counsel.

**SUMMARY:** Proposed Rule IRPS 08-2 would modify NCUA's Chartering and Field of Membership Manual to update and clarify the process of approving credit unions to serve "underserved areas," primarily in four respects. First, the rule clarifies the procedure for establishing that an "underserved area" meets the definition of a "local community." In this regard, the NCUA Board is reconsidering whether, to support a "presumptive community," a letter providing qualitative evidence of interaction and common interests is needed to confirm that an area meets that definition. Second, the rule addresses the application of the economic distress criteria (median family income, unemployment, poverty, county population loss and county migration loss) to determine whether an area is sufficiently "distressed" to qualify as "underserved," particularly when the area combines multiple geographic units. Third, the rule updates and clarifies what documentation is needed to show that an area has "significant unmet needs" for loans and applicable financial services. It prescribes a one-page "narrative statement," supported by relevant, objective statistical data, to address the proposed area's unmet needs for loans or one or more of the financial services that credit unions are authorized to offer. Finally, the rule recognizes that

meaningful data from NCUA and the federal banking agencies will be available to assess whether an area is "underserved by other depository institutions." The rule prescribes a methodology for using this data to compare the concentration of depository institution facilities among the population of a proposed area's non-"distressed" parts against the same facilities-to-population concentration in the proposed area as a whole.

**RECOMMENDED ACTION:** Recommend the Board approve publication of the proposed rule for a 60-day comment period.

**ATTACHMENT:** Proposed Rule IRPS 08-2, revising NCUA's Chartering and Field of Membership Manual, IRPS 03-1, as amended by IRPS 06-1.

**7535-01-U**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 701**

**RIN #3133-AD48**

**Organization and Operations of Federal Credit Unions**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed Rule

**SUMMARY:** NCUA seeks public comment on four proposals to modify its Chartering and Field of Membership Manual to update and clarify the process of approving credit union service to “underserved areas.” The first proposal clarifies the procedure for establishing that an “underserved area” qualifies as a local community. The second addresses the application of the economic distress criteria that determine whether an area combining multiple geographic units is sufficiently “distressed” to qualify as “underserved.” The third would update the documentation and clarify the scope requirements for demonstrating that a proposed area has “significant unmet needs” for loans and applicable financial services. The final

proposal recognizes that meaningful data from NCUA and the federal banking agencies will be available to assess whether an area is “underserved by other depository institutions.”

**DATES:** Comments must be received on or before [insert date 60 days after Federal Register publication.]

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- NCUA Web Site:  
[http://www.ncua.gov/RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html). Follow the instructions for submitting comments.
- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] Comments on Proposed Rule Part 701.1” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

**FOR FURTHER INFORMATION CONTACT:** Michael J. McKenna, Deputy General Counsel; John K. Ianno, Associate General Counsel; or Steven W. Widerman, Trial

Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314  
or telephone (703) 518-6540.

## **SUPPLEMENTARY INFORMATION:**

### **I. BACKGROUND**

In 1998, Congress enacted the Credit Union Membership Access Act (CUMAA), Pub. L. 105-219, 112 Stat. 914 (1998). Among other things, CUMAA authorized the NCUA Board to allow multiple common bond credit unions to serve members residing in “underserved areas,” provided the credit union establishes and maintains a facility there. 12 U.S.C. 1759(c)(2). For an area to be “underserved,” CUMAA requires the NCUA Board to determine that a local community, neighborhood or rural district is an “investment area” as defined in the Community Development Banking and Financial Institutions Act of 1994 (“CDFI Act”), 12 U.S.C. 4702(16), and also that it is “underserved . . . by other depository institutions.”<sup>1</sup> 12 U.S.C. 1759(c)(2)(A).

The CDFI Act defines an “investment area” as a geographic area that “encompasses or is located in an empowerment zone or enterprise community designated under [26 U.S.C. 1391]; or that “meets the objective criteria of economic distress developed by the [Community Development Financial Institutions] Fund” (“CDFI Fund”) and also “has significant unmet needs for loans or equity investments.” 12 U.S.C. 4702(16). The Fund established “criteria of economic

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<sup>1</sup> A “depository institution” is defined to include insured credit unions. 12 U.S.C. 461(b)(1)(A)(iv).

distress” and implemented the “significant unmet needs” criterion by regulation. 12 C.F.R. 1805.201(d) and (e) (1998); 12 C.F.R. 1805.104(dd) (1998).

To reflect the enactment of CUMAA and its introduction of “underserved areas,” NCUA revised its Chartering and Field of Membership Manual (“Chartering Manual”) in 1998, replacing the previous authority to serve low-income communities and associations. 12 C.F.R. 701.1 (1999). As revised, the Chartering Manual implemented the statutory definition of “underserved area” and incorporated the then-existing CDFI criteria for establishing a “distressed” area. 63 FR 71998 (December 30, 1998). Those criteria addressed median family income, poverty, unemployment, distressed housing, county population loss, and significant unmet needs for loans and equity investments. 63 FR at 72015, 72042.

Anticipating the possibility of periodic additions to the then-existing distress criteria, the Chartering Manual incorporated by reference other criteria that the CDFI Fund might establish in the future. 67 FR 20013, 20017 (April 24, 2002). The distress criteria that apply today are the same ones that applied in 1998, except that the “distressed housing” criterion has been replaced by county “net migration loss.” 12 C.F.R. 1805.201(b)(3)(D)(5) (2008).

The proposed rule (Interpretive Ruling and Policy Statement 08-2) is intended to update and clarify the existing process of approving credit union service to “underserved areas.” Public comments on the proposed modifications are welcome. To facilitate the consideration of these comments, the NCUA Board urges commenters to organize and label their comments to correspond to the topics and issues discussed below.

## II. DISCUSSION OF PROPOSED RULE

### A. Definition of a Local Community.

To be eligible for approval as an “underserved area,” a proposed area first must qualify as a “local community, neighborhood or rural district” (“local community”). 12 U.S.C. 1759(c)(2)(A); S. Rep. No. 193, 105<sup>th</sup> Cong., 2d Sess. 6 (1998); H.R. Rep. No 105-472, 105<sup>th</sup> Cong., 2d Sess. 19 (1998). The Chartering Manual’s criteria for establishing a “local community” for “underserved area” purposes deviates somewhat from the “well-defined local community” criteria elsewhere in the Manual.

When a proposed area qualifies as a “presumptive community” (multiple political jurisdictions with a total population of 500,000 or less; or an area within a Metropolitan Statistical Area with a population of 1 million or less) the Chartering Manual’s chapter on community chartering requires a credit union to complete the presumption by submitting a letter “describing how the area meets the standards for community interaction and/or common interests” within in the proposed area.<sup>2</sup> *Id.* Ch. 2, §V.A.1. The chapter on “underserved areas” does not require an equivalent letter to establish that a proposed “underserved area” is a “presumptive community.” Manual, Ch. 3, §III.A.

The disparity concerning the letter supporting a “presumptive community” provides an opportunity to reconsider whether the letter is needed at all to establish a local community in the context of either a community charter or an “underserved

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<sup>2</sup> When the letter supporting a “presumptive community” fails to present sufficient evidence of community interaction and/or common interests, the credit union may be required to provide a full analysis to support that the area is a well-defined local community. Manual, Ch. 2, §V.A.1.

area.” The original purpose of the letter in the community charter context was to supplement the record with qualitative evidence of interaction and common interests within the community. The NCUA Board invites public comment on whether a supporting letter is necessary to further that purpose when a multiple group credit union seeks to add an “underserved area.” To ensure consistency, the proposed rule revises the chapter on “underserved areas” to incorporate the definition of “well defined local community” set forth in the chapter on community chartering. That definition will be revised depending on the Board’s evaluation of the comments received on the letter requirement.

B. Criteria of Economic Distress.

The proposed rule addresses the practical incompatibility between credit union service to a local community and the CDFI Fund’s economic distress criteria that apply to determine whether a proposed area is an “investment area,” thus qualifying it as “underserved.” To qualify as a “local community, neighborhood or rural district,” the proposed area must be a “single, well-defined” area so as to facilitate the mandatory interaction and common interests that signify a common bond among its residents. 65 FR 37065, 37072, 37082 (June 13, 2000). This has always meant that the parts of a proposed area must be contiguous, regardless of any other prerequisites for credit union service that apply. Because of this restriction, NCUA evaluates a “local community, neighborhood or rural district”—whether seeking approval as an “underserved area” or otherwise—strictly as a single, unified entity.



In several respects, the “single unified entity” approach is incompatible with the “geographic units” the CDFI Fund utilizes to apply its economic distress criteria. First, the areas that the CDFI Fund is asked to certify as “investment areas” conform from the outset to prescribed census units (e.g., tracts or blocks) or political subdivisions, allowing each such geographic unit or group of units to be treated as a separate “investment area.” 12 C.F.R. 1805.201(b)(3)(ii)(B) (2008). In contrast, an “underserved area” that a credit union proposes to add may be drawn without regard to prescribed geographic units or political boundaries, reflecting the area’s status as a single unified entity (i.e., a well-defined community). Second, the proposed area’s boundaries may be nontraditional, consisting of a riverbank, a railroad line or an interstate highway, for example. 63 FR at 72038-72039. Further, the proposed area may even bisect the traditional geographic units and political subdivisions upon which the CDFI Fund relies. Finally, when evaluating an “investment area,” the CDFI Fund considers only the number of persons who reside there. In contrast, when deciding whether to add a proposed area to its field of membership, a credit union considers potential membership from among the persons who reside, work, worship or attend school there. These distinctions tend to complicate the translation of a proposed “underserved area” into the geographic units envisioned by the CDFI Fund’s economic distress criteria.

In the decade since CUMAA, a plethora of economic and demographic data has become available over the Internet, and there has been a manifold increase in the number of people who have Internet access. Convenient on-line access to relevant data has considerably simplified the task of translating an “underserved

area” into the geographic units that the CDFI Fund uses to apply the economic distress criteria that define an “investment area.” Therefore, this proposed rule revisits NCUA’s rules for qualifying an “underserved area” primarily to update and conform its approach to present circumstances.

As a preliminary matter, a proposed area qualifies as an “investment area” without regard to the economic distress and “significant unmet needs” criteria if it is presently designated an “Empowerment Zone” or an “Enterprise Community.” 12 C.F.R. 1805.201(b)(3)(ii)(A)(3). Empowerment Zones and Enterprise Communities were designated by the U.S. Department of Housing and Urban Development and the U.S. Department of Agriculture between 1993 and 1996. These designations have since largely expired,<sup>3</sup> so most proposed areas will not be able to bypass the economic distress and “significant unmet needs” criteria of an “investment area.”

For proposed areas that do not benefit from an Empowerment Zone or Enterprise Community designation, the availability of certain on-line resources will make it easier to apply the economic distress criteria. The on-line resources that correspond to each step are discussed below and the internet address of each is cited in the footnotes. In any case, it is useful to understand in a step-by-step progression how the economic distress criteria operate.

Metro or Non-Metro Location. The initial step is to determine whether a proposed area is located within or outside a “Metropolitan Area” as designated by

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<sup>3</sup> Unexpired Empowerment Zones and Enterprise Communities are identified at: [www.hud.gov/offices/cpd/economicdevelopment/programs/rc/tour/index.cfm](http://www.hud.gov/offices/cpd/economicdevelopment/programs/rc/tour/index.cfm). At this link, select a state from the map or list, then select from the “RC/EZ/EC Communities” shown to generate a map of the designated areas.

the Office of Management and Budget (“OMB”). 12 C.F.R. 1805.104(ff). In practice, the CDFI Fund deems a proposed area to be located within a Metropolitan Area if it is located within an OMB-designated “Metropolitan Statistical Area” (“MSA”), and vice versa. 44 U.S.C. 3504(e)(3)(E). OMB updates its MSA designations annually; however, to ensure consistency with the CDFI Fund’s distress criteria, which are measured according to the most recent decennial Census, the proposed rule relies solely on the MSA designations that correspond to the same decennial census, rather than on updated designations.<sup>4</sup>

The location within or outside a Metropolitan Area dictates the “geographic unit(s)” into which the proposed area must be translated in order to apply the economic distress criteria. The geographic units prescribed for a Metropolitan area (“Metro units”) are a census tract, a block group, and an American Indian or Alaskan Native area. 12 C.F.R. 1805.201(b)(3)(ii)(B) (2008). The geographic units prescribed for a Non-Metropolitan area (“Non-Metro units”) are a county (or equivalent area), a “minor civil division that is a unit of local government,” an incorporated place, a census tract, a block numbering area, a block group, or an American Indian or Alaskan Native area. *Id.* In either case, the proposed area must consist entirely of whole Metro or Non-Metro units; it cannot consist of fractional units (e.g., half of a census tract or half of a county). A proposed area that is partly within and partly outside a Metropolitan Area (e.g., that straddles an MSA’s boundary) must be evaluated using Metro units because they are the largest permissible unit that is common to all parts of the area.

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<sup>4</sup> For MSA designations that correspond to the 2000 decennial Census, see “Metropolitan Areas and Components, 1999, with FIPS Codes” (6/30/99 revised 1/28/02) at: <http://www.census.gov/population/estimates/metro-city/99mfips.txt>

Single Metro or Non-Metro Unit. To qualify as an “investment area,” a proposed area consisting of a single whole Metro unit (e.g., a single census tract) or a single whole Non-Metro unit (e.g., a single county) must as a whole meet one of the following distress criteria, as reported by the most recent decennial census published by the U.S. Bureau of the Census (“decennial Census”):

- Unemployment. Unemployment rate at least 1.5 times the national average; or
- Poverty. At least 20 percent (20%) of the population lives in poverty.

12 C.F.R. 1805.201(b)(3)(ii)(D)(1) and (3) (2008).

If the proposed area consists of a single Metro unit of any kind, it may also meet the following criterion, as reported by the most recent decennial Census:

- Metro Area Median Family Income. Median family income (“MFI”) at or below 80 percent (80%) of either the Metro Area’s MFI or the national Metro Area MFI, whichever is greater.

If the proposed area consists of a single Non-Metro unit of any kind, it may also meet the following criterion, as reported by the most recent decennial Census:

- Non-Metro Area Median Family Income. MFI at or below 80 percent (80%) of either the statewide Non-Metro Area’s MFI or the national Non-Metro Area MFI, whichever is greater.

12 C.F.R. 1805.201(b)(3)(ii)(D)(2)(i) and (ii) (2008).

Finally, if the proposed area consists of a single Non-Metro county, it may meet one of the following two additional criteria, as reported by the most recent decennial Census:

- County Population Loss. County's population loss of at least 10 percent (10%) between the most recent and the preceding decennial census; or
- County Migration Loss. County's net migration loss of at least 5 percent (5%) in the 5-year period preceding the most recent decennial census.

12 C.F.R. 1805.201(b)(3)(ii)(D)(4) and (5) (2008).

Multiple Contiguous Metro or Non-Metro Units. If a proposed area consists of multiple contiguous Metro units (e.g., a group of adjoining census tracts) or multiple contiguous Non-Metro units (e.g., a group of adjoining counties), the area is subject to a population threshold that does not apply to a proposed area consisting of a single unit. Thus, when a proposed area consists of multiple contiguous units, at least 85 percent (85%) of the area's total population must reside within the units that "together meet one of the [applicable distress] criteria" set forth above ("the 85% population threshold"). 12 C.F.R. 1805.201(b)(3)(ii)(C)(2) (2008).

The language of the 85% population threshold suggests that all of the "distressed" units must qualify as such under the *same* criterion, but in practice, the CDFI Fund allows each "distressed" tract within a group to qualify under any one of the criteria. Also, the decennial Census itself does not apply the 85% population threshold to a proposed area consisting of multiple contiguous units; it only reports whether an individual unit meets an applicable distress criterion.

A proposed area consisting either of a single Metro or Non-Metro unit, or of multiple contiguous units in which the "distressed" units represent at least 85 percent of the area's population, will meet the definition of an "investment area" provided

that, as explained below, it also has “significant unmet needs” for loan products and applicable financial services.

Resources for Determining If Distress Criteria Are Met. The CDFI Fund’s “My CDFI Fund” website is an invaluable resource for determining whether a proposed area is “distressed,” but only if the area’s unit(s) conform to one or more census tracts or counties, or to an independent city (which is treated as equivalent to a county); the site is not equipped to analyze any other kind of geographic unit.<sup>5</sup> Using its “Information and Mapping System” feature, the “My CDFI Fund” website allows the user to enter selected units that it then analyzes individually and as a proposed area. The analysis reflects the most recent decennial Census data.<sup>6</sup> The results are displayed on a comprehensive “Investment Area/Hot Zone Worksheet” (“IA Worksheet”).

For each unit individually, the IA Worksheet shows: whether it is located within an MSA; its total population; its poverty rate; the percent of benchmark MFI; the unemployment rate; and most importantly, whether the unit is “distressed” under the distress criteria.<sup>7</sup> For the proposed area as a whole, the IA Worksheet shows:

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<sup>5</sup> The “My CDFI Fund” website’s “Information and Mapping System” (“CIMS”) is available at: <https://www.cdfifund.gov/myCDFI/Organization/Mapping/Mapping.asp>. The “Welcome to CIMS” page explains the options for identifying “CDFI Investment Areas” and a “Mapping System Overview and Tutorial.” The “My CDFI Fund” website is accessible to registered users through an organizational account holder. For instructions on how to become a registered user, see <http://www.ncua.gov/CreditUnionDevelopment//Underserved/underserved.html>. Under the “Expanding into Investment Areas” section is a link entitled “Instructions to Use the CDFI Website.”

<sup>6</sup> Typically, there is an 18-month lag between the taking of a decennial U.S. Census and the publication of the results. Thus, for example, the results of the 2000 census became available when published in 2002 and will remain the most recent census until the results of the 2010 census are published.

<sup>7</sup> The “My CDFI Fund” website implies that it determines whether a proposed area “qualifies as an investment area.” If so, it would not be necessary for an applicant to meet a further criterion--demonstrating “significant unmet needs for loans,” etc., within the proposed area. In fact, it is apparent that the website determines only whether a unit or proposed area is “distressed,” meaning

whether the population of the non-“distressed” units population is less than 15 percent of the whole area’s population (i.e., applies the 85% population threshold); the exact percentage of the area’s population that resides in the non-“distressed” units; the total population of the non-“distressed” units; and whether the combined units are contiguous. When the IA Worksheet indicates that a proposed area does not qualify as “distressed,” none of these details is provided.

At present, the “My CDFI Fund” website’s analysis is the most expeditious means of establishing that a proposed area is sufficiently “distressed,” thus conserving credit union resources. To benefit from the convenience of the “My CDFI Fund” website, the NCUA Board encourages credit unions to conform their proposed “underserved areas” to the “geographic units” the site is limited to--census tract and county boundaries, as the case may be.

Approval to Serve an Already Approved “Underserved Area”. Once a credit union is initially approved to serve an area that qualifies as “underserved,” other credit unions may be approved to serve the area provided it is “underserved” at the time they apply. The proposed rule “grandfathers” all credit unions approved to serve an area while it qualifies as “underserved,” allowing them to continue serving that area in the event it no longer qualifies. To terminate the approval to serve an area that no longer is “underserved” area would penalize the credit union for its efforts to bring an adequate level of service to the area.

An area that previously was approved as “underserved” may still qualify as “distressed” when the proposed rule is applied using the decennial Census in effect

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that an applicant still must independently demonstrate the proposed area’s “significant unmet needs for loans,” etc., in order to qualify as an “investment area.”

when the new applicant applies. When that is the case, the new applicant must show at the time it applies that the area still has “significant unmet needs for loans and financial services (to qualify as an “investment area”) and still is “underserved by other depository institutions” (to qualify as “underserved”). These criteria may become more difficult to meet as the number of depository institutions serving the area increases.

Issues for Comment. The NCUA Board invites public comment on the application of the economic distress criteria, including whether a proposed area should be required to conform to county or census tract boundaries, as the case may be, so that that census tracts apply uniformly to areas located within a Metropolitan Area, and counties apply uniformly to areas located outside a Metropolitan Area.

C. Significant Unmet Needs for Loans or Financial Services.

Apart from applying the economic distress criteria, the CDFI Fund definition of an “investment area” requires a showing of “significant unmet needs for loans or equity investments” within the proposed area. 12 U.S.C. 4702(16)(A)(ii). Because credit unions are not authorized to offer equity investments, the scope of this “unmet needs” test initially was limited by definition to the unmet needs for loans.<sup>8</sup> In implementing the “significant unmet needs test,” the CDFI Fund added the alternative of addressing the unmet needs for a range of financial services including

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<sup>8</sup> Credit unions are not authorized to offer “equity investments,” which are defined to include “a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity [and] a purchase of secondary capital.” 12 C.F.R. 1805.104(t) (2008).



many that credit unions are authorized to offer: checking accounts, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and other similar services.<sup>9</sup> 12 C.F.R. 1805.102(b)(3)(ii)(A)(2).

From 1998 through 2000, NCUA permitted the “significant unmet needs” showing to be made through the business plan required to be developed by a credit union seeking to add an “underserved area.” 63 FR at 72042. The business plan already was required to “identify the credit and depository needs of the community and detail how the credit union plans to serve those needs.” Id. For that reason, NCUA revised its policy to recognize that a proposed area that is “distressed” is presumed to have “significant unmet needs.” 65 FR 64512, 64518 (Oct. 27, 2000).

Since the enactment of CUMAA, the CDFI Fund has modified the documentation and scope requirements for a proposed area to meet the “significant unmet needs” test. “Studies or other analyses” were originally required to “adequately demonstrate a pattern of unmet needs for loans and equity investments.” 12 C.F.R. 1805.301(e) (1998). As modified, a “narrative analysis” is the only supporting documentation now required. 12 C.F.R. 1805.201(b)(3)(ii)(E) (2008). In practice, the CDFI Fund accepts a one-page narrative statement describing the significant unmet capital or financial services a proposed area. “CDFI Certification Application” (June 2007) at 11. The analysis must be supported by

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<sup>9</sup> The financial services credit unions are authorized to offer are drawn from the CDFI Fund’s definition of “financial services” that institutions generally offer. 12 C.F.R. 1805.104(v) (2008). To these financial services, the Fund also added certain “financial products” that, except for loans, credit unions do not offer to their members. 12 C.F.R. 1805.104(u) (2008).

relevant statistical evidence. There are no definitive standards of evaluation; the statements are evaluated on a case-by-case basis.

Instead of a presumption of “significant unmet needs,” the proposed rule revises the Chartering Manual to require a credit union to support its “underserved area” application with a one-page “narrative statement” demonstrating a pattern of “significant unmet needs” in the proposed area for loans or for one or more of the financial services that credit unions are authorized to offer. However, a credit union may choose which of these services to address and need not address all of them.

Under the proposed rule, the narrative statement on “significant unmet needs” must be supported by relevant, objective statistical data reflecting, among other things, loan and financial services activity in the proposed area--much of which is now publicly available over the Internet. The narrative statement also may be supplemented by objective testimonial evidence. The supporting data and evidence should be appended to the narrative statement.

In addressing a proposed area’s unmet needs, for example, a credit union might focus on the need for cash operations to replace check cashing outlets and on the need for personal loans at reasonable rates to replace pawn brokers, payday lenders and rent-a-centers. To support such a Narrative Statement, the credit union might rely on statistics and conclusions about these needs published by the proposed area’s Chamber of Commerce.

Issues for Comment. Public commenters are invited to address the “significant unmet needs” criterion, including whether the Narrative Statement should be integrated into the Business Plan a credit union is already required to submit.

Further, the NCUA Board asks commenters to identify available statistical data that would assist credit unions in demonstrating the unmet needs for loans and credit union services in a proposed area.

D. Underserved by Other Depository Institutions.

The CDFI Fund's "significant unmet needs" test focuses on the need for products and services within a proposed area. In contrast, CUMAA's demand that a proposed area be "underserved . . . by other depository institutions" focuses on the presence of *providers* of products and services within the area. CUMAA did not specify a methodology for determining whether a proposed area meets this test; instead, it broadly refers to unspecified "data of the [NCUA] Board and the Federal banking agencies." 12 U.S.C. 1759(c)(2)(A)(ii).

In the decade since CUMAA, raw data has accumulated within government on branch locations and the volume of business in certain products and services, but meaningful and reliable data on these points has only recently become readily accessible. This data makes it possible to quantify and compare the presence of financial institution facilities in a given area. The proposed rule suggests a flexible methodology that relies on publicly available population data and data on the location of financial institution branches.

Concentration of Facilities. The proposed methodology compares two measures to determine whether an area is adequately served according to the concentration of depository institution facilities within the area. The first measure--which sets a benchmark level of adequate service--is the ratio of depository institution facilities to the population of the non-"distressed" tracts in a proposed

area, regardless whether those tracts are contiguous. In cases where there are no non-“distressed” tracts within a proposed area, a non-“distressed” tract or larger unit immediately adjoining the proposed area (e.g., county or city) may be used to set the benchmark ratio. The second measure is the ratio of facilities to the combined population of all of the tracts within the proposed area.

As shown in the example below, if the benchmark ratio of facilities within the non-“distressed” tracts (column A below) exceeds the ratio of facilities within all the tracts of the proposed area as a whole (column B below), the proposed rule deems the area to be “underserved by other depository institutions,” and vice versa (column C below):

Concentration of Depository Institution Facilities			
	A	B	C
<i>Example of:</i>	<i>Benchmark ratio</i>	<i>“Underserved”</i>	<i>Not “Underserved”</i>
	<i>Non-“distressed” census tracts only</i>	<i>All census tracts in proposed area</i>	<i>All census tracts in proposed area</i>
Facilities (numerator)	100	571	800
Population (denominator)	15,000	100,000	100,000
Ratio of facilities to population (concentration)	1:150 (1 facility for every 150 persons)	1:175 (1 facility for every 175 persons)	1:125 (1 facility for every 125 persons)

The proposed methodology does not distinguish between Metro and Non-Metro locations, and need not be limited to census tracts as its unit of measure for each ratio. Census tracts are proposed as the unit of measure, however, because most credit unions are likely to have already used them in determining whether the

proposed area is sufficiently “distressed,” and thus will be familiar with the data and data sources associated with the tracts within the area.

Data on Population and Location of Facilities. Current tract-by-tract population data is available on-line from the “My CDFI Fund” website’s IA Worksheet or from the most recent decennial Census itself. Current data on the location of facilities of institutions insured by the Federal Deposit Insurance Corporation (“FDIC”) or regulated by the Office of Thrift Supervision is available on-line on the FDIC’s “Summary of Deposits” webpage sorted by state, county and MSA.<sup>10</sup> Current data on the location of credit union facilities is collected by NCUA annually from a credit union’s “Report of Officials.” NCUA plans to organize that data and make it available on-line at the NCUA website. This data can be sorted manually on a tract-by-tract basis.

Issues for Comment. Public commenters are invited to address the “underserved by other depository institutions” criterion, including whether the facilities of such institutions should be defined to include ATMs and shared branches. Further, the NCUA Board asks commenters to suggest methodologies other than the concentration of facilities to assess whether a proposed area is “underserved by other depository institutions,” and to identify sources of data on the location depository institution facilities that is sorted by census tract.

#### E. Service Status Reports.

The current rule authorizes NCUA’s regional directors to obtain from FCUs adding “underserved areas” reports on their success in serving members in these

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<sup>10</sup> FDIC Summary of Deposits webpage: <http://www2.fdic.gov/sod/sodSummary.asp?barItem=3>

areas. Manual, Ch. 3, §III.A. Some commenters have in the past recommended that NCUA affirmatively require these reports. That issue is not addressed in this proposed rulemaking because the Board is as a separate matter considering recommendations of NCUA's Outreach Task Force that would call for NCUA to obtain information from credit unions on member income levels and products and services offered to members, and to organize the data by census tract. Consideration of the issue in this rulemaking would therefore be an unnecessary duplication.

F. Pending Applications to Serve an "Underserved Area".

If, as a result of its review of public comments on this proposed rule, the NCUA Board adopts a final rule modifying the current Chartering Manual, the modifications will apply prospectively. Pending applications for approval to serve an "underserved area" and applications received after the date of publication of this rule will be deferred until the rulemaking process is completed.

## **REGULATORY PROCEDURES**

### Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under \$10 million in assets). The proposed amendments will not have a significant economic impact on a substantial

number of small credit unions and therefore, a regulatory flexibility analysis is not required.

#### Paperwork Reduction Act

This proposed rule imposes a requirement that any multiple common bond federal credit union that wishes to add an underserved area must apply for the NCUA Board's written approval to do so. This proposed rule mandates certain specific information that must be included in the application. NCUA requests public comment on all aspects of the collection of information in this proposed rule. Based upon past experience NCUA anticipates approximately 100 applications per year. Given the type of information required to be included in the application, NCUA estimates a burden of 8 hours per application and will revisit this estimate in light of the comments NCUA receives.

NCUA will submit the collection of information requirements contained in this proposed rule to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3507. NCUA will use any comments received to develop its new burden estimates. Comments on the collections of information should be sent to Office of Management and Budget, Reports Management Branch, New Executive Office Building, NCUA Desk Officer, Room 10202, 725 17<sup>th</sup> St., NW, Washington, D.C. 20503; or by fax to (202) 395-6974; Attention: Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

NCUA made the following assumptions about this proposed rule:

- The likely respondents are multiple common bond federal credit unions.
- Estimated annual number of respondents: 100.
- Estimated average annual burden hours per respondent: 8 hours.
- Estimated total annual disclosure and recordkeeping burden: 800 hours.

In addition to comments on the proposed rule, NCUA invites comment on:

- The accuracy of NCUA's estimate of the burden of the information collections;
- Ways to minimize the burden of the information collections on Federal credit unions, including the use of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number. NCUA is currently requesting a control number for this information collection from OMB.

### Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of



power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

**List of Subjects**

**12 CFR Part 701**

Credit, Credit unions, Reporting and record keeping requirements

By the National Credit Union Administration Board on May 22, 2008.

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Mary Rupp  
Secretary of the Board

For the reasons stated above, 12 CFR Part 701 is proposed to be amended as follows:

**PART 701-ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS**

1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601, et seq., 42 U.S.C. 1981 and 3601-3610. Section 701.35 is also authorized by 12 U.S.C. 4311-4312.

2. Section 701.1 is revised to read as follows:

**§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.**

(a) National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 08-2, Chartering and Field of Membership Manual, hereby published as Appendix B to part 701 pursuant to 12 U.S.C. 552(a)(1) and accompanying regulations.

(b) The *Chartering and Field of Membership Manual* is available on-line at [www.ncua.gov](http://www.ncua.gov) or may be obtained by request addressed to [ogcmail@ncua.gov](mailto:ogcmail@ncua.gov) or the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

(c) The National Credit Union Administration may issue amendments or revisions to the *Chartering and Field of Membership Manual* from time to time. An historic file of amendments or revisions is maintained and made available for inspection at the National Credit Union Administration, 1775 Duke Street,

Alexandria, VA 22314.

(Approved by the Office of Management and Budget under control numbers 3133-0015 and 3133-0116.

**Note:** The *Federal Register* requires the full *Chartering and Field of Membership Manual* to be published as an Appendix to Part 701 rather than to be incorporated by reference in the regulatory text. Accordingly, when the Federal Register publishes this proposed rule, the rule text below will be reflected in Chapter 3, Subchapter III, of the *Manual* published as an Appendix to Part 701.

3. Appendix B to 12 CFR Part 701 is revised as follows:

#### **Appendix B to Part 701 -- Chartering and Field of Membership Manual**

\* \* \* \* \*

Chapter 3, Subchapter III, Service to Underserved Communities, is revised to read as follows:

A multiple common bond federal credit union may include in its field of membership, without regard to location, an “underserved area” as defined by the Federal Credit Union Act. 12 U.S.C. 1759(c)(2). The addition of an “underserved area” will not change the charter type of the multiple common bond federal credit union. More than one multiple common-bond federal credit union can serve the same “underserved area,” if approved as provided below.

The Federal Credit Union Act defines an “underserved area” as (1) a “local community, neighborhood, or rural district” that (2) meets the definition of an “investment area” under section 103(16) of the Community Development Banking and Financial Institutions Act of 1994 (“CDFI”), 12 U.S.C. 4702(16), and (3) is “underserved by other depository institutions” based on data of the NCUA Board and the federal banking agencies.

(1) Local Community. To be eligible for approval as “underserved,” a proposed area must be a well-defined local community, neighborhood, or rural district as defined in Chapter 2, sections V.A.1. and V.A.2. of this Manual.

(2) Investment Area. To be approved as an “underserved area,” the proposed area must meet the CDFI definition of an “investment area.” 12 U.S.C. 4702(16). A proposed area that, at the time the credit union applies, is designated in its entirety as an Empowerment Zone or Enterprise Community (12 U.S.C. 1391) automatically qualifies as an “investment area”; no further criteria must be met. 12 U.S.C. 4702(16)(B).

Otherwise, to qualify as an “investment area,” the proposed area must meet “the objective criteria of economic distress” developed by the CDFI Fund (“distress criteria”), and also must demonstrate that the area has “significant unmet needs” for loans and financial services credit unions are authorized to offer to their members. 12 U.S.C. 4702(16)(A).

(3) Location of Proposed “Underserved Area”. The location of a proposed area either within or outside of a Metropolitan Area determines the geographic unit(s) a credit union must apply to determine whether the area meets the distress

criteria. An area is deemed to be Metropolitan if it is located, in whole or in part, within a “metropolitan statistical area” (“MSA”) that corresponds to the most recent completed decennial census published by the U.S. Bureau of the Census (“decennial Census”); an area that is located entirely outside such an MSA is deemed to be Non-Metropolitan.

For a Metropolitan proposed area, the permissible units (“Metro units”) for implementing the economic distress criteria are: a census tract, a block group, and an American Indian or Alaskan Native area . 12 C.F.R. 1805.201(b)(3)(ii)(B) (2008). For a Non-Metropolitan proposed area, the permissible units (“Non-Metro units”) are: a county (or equivalent area), a minor civil division that is a unit of local government, an incorporated place, a census tract, a block numbering area, a block group, or an American Indian or Alaskan Native area. Id. When possible, it is advisable to use a census tract as the proposed area’s Metro unit and either a census tract or county as its Non-Metro unit, as the case may be.

(4) Proposed Area Consisting of a Single Metro Unit. A proposed area consisting of a single whole unit, either Metro (e.g., a single census tract) or Non-Metro (e.g., a single county), must meet one of the following distress criteria, as reported by the most recent decennial Census:

- Unemployment. Unemployment rate at least 1.5 times the national average; or
- Poverty. At least 20 percent (20%) of the population lives in poverty.
- Other Criterion. Any other economic distress criterion the CDFI Fund may adopt in the future.

12 C.F.R. 1805.201(b)(3)(ii)(D)(1) and (3) (2008).

If the proposed area consists of a single Metro unit of any kind, it may also meet the following criterion, as reported by the most recent decennial Census:

- Metro Area Median Family Income. Median family income (“MFI”) at or below 80 percent (80%) of either the Metro Area’s MFI or the national Metro Area MFI, whichever is greater.

If the proposed area consists of a single Non-Metro unit of any kind, it may also meet the following criterion, as reported by the most recent decennial Census:

- Non-Metro Area Median Family Income. MFI at or below 80 percent (80%) of either the statewide Non-Metro Area’s MFI or the national Non-Metro Area MFI, whichever is greater.

12 C.F.R. 1805.201(b)(3)(ii)(D)(2)(i) and (ii) (2008).

Finally, if a Non-Metro proposed area consists of a single county, it may meet one of the following two criteria, as reported by the decennial Census:

- County Population Loss. County’s population loss of at least 10 percent (10%) between the most recent and the preceding decennial census; or
- County Migration Loss. County’s net migration loss of at least 5 percent (5%) in the 5-year period preceding the most recent decennial census.

12 C.F.R. 1805.201(b)(3)(ii)(D)(4)-(5) (2008).

(5) Proposed Area Consisting of Multiple Contiguous Units. A proposed area consisting of multiple contiguous units, either Metro (e.g., a group of adjoining census tracts) or Non-Metro (e.g., a group of adjoining counties), is subject to a population threshold when implementing the economic distress criteria. At least 85

percent (85%) of the area's total population must reside within the units that are "distressed," i.e., meet one of the applicable economic distress criteria above, as reported by the decennial Census (Unemployment, Poverty and MFI for census tracts plus, for counties only, Population Loss and Migration Loss). The population threshold is met, and the whole proposed area qualifies as "distressed," when the "distressed" units represent at least 85 percent of the area's total population.

(6) Proposed Area's "Significant Unmet Needs" for Loans and Financial Services. A proposed area that is "distressed" also must display "significant unmet needs" for loans or one or more of the following financial services credit unions are authorized to offer: share draft accounts, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and other similar services ("credit union services"). To meet this criterion, the credit union must submit for NCUA approval a one-page "Narrative Statement of Unmet Needs" ("Narrative Statement") indicating a pattern of unmet needs in the proposed area for loans or one or more credit union services. The credit union may choose which credit union services to address and need not address all of them.

The Narrative Statement must be supported by relevant, objective statistical data reflecting, among other things, financial, demographic, economic or loan activity pertaining to the proposed area. The supporting statistical data (which should be appended to the Narrative Statement) may be supplemented by objective testimonial evidence.

(7) Underserved by Other Depository Institutions. A proposed area that meets the CDFI definition of an "investment area" (i.e., is "distressed" and has

“significant unmet needs”) must also be underserved by other depository institutions, including credit unions. 12 U.S.C. 1759(c)(2)(A)(ii). This statutory criterion is met when the concentration of depository institution facilities among the population of the proposed area’s non-“distressed” tracts--which sets a benchmark level of adequate service--is greater than the concentration of facilities among the population of all of the proposed area’s census tracts combined. If there are no non-“distressed” tracts within a proposed area, an immediately adjoining non-“distressed” census tract or larger unit (e.g., city or county) may be used to set the benchmark concentration ratio.

Without regard to a proposed area’s location, this process compares two ratios: the ratio of facilities to the population of the non-“distressed” tracts (the benchmark) versus the same ratio in the proposed area as a whole. If the benchmark ratio is greater than the whole area’s ratio, then the area meets the “underserved by other depository institutions” criterion, and vice versa.

(8) Approval to Serve an Area Already Approved as “Underserved”. Once a credit union is initially approved to serve an “underserved area,” other credit unions that subsequently apply may be approved to serve the same area. To be approved, the area must qualify as “underserved” at the time the new applicant applies. Thus, that applicant will have to demonstrate as provided above that the area still is “distressed” according to the decennial Census then in effect, and still has “significant unmet needs for loans or credit union services (to qualify as an “investment area”). Finally, the new applicant must demonstrate that the area still is “underserved by other depository institutions” (to qualify as “underserved”).



(9) Service Facility. Once an “underserved area” has been added to a federal credit union’s field of membership, the credit union must establish within two years, and maintain, an office or service facility in the community. A service facility is defined as a place where shares are accepted for members’ accounts, loan applications are accepted and loans are disbursed. By definition, a service facility includes a credit union-owned branch, a shared branch, a mobile branch, or an office operated on a regularly scheduled weekly basis or a credit union owned electronic facility that meets, at a minimum, the above requirements. This definition does not include an ATM or the credit union’s Internet web site.

(10) Business Plan. A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must explain how the credit union plans to fulfill the unmet needs for loans and credit union services identified in its Narrative Statement. The credit union will be expected to regularly review the business plan to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the “underserved area” to ensure that the needs of the community are being met as well as requiring such reports before NCUA allows a multiple common bond federal credit union to add an additional “underserved area.”

(11) Low Income Benefits. A multiple common bond federal credit union that serves an “underserved area” will not be able to receive the benefits afforded to low-income designated credit unions, such as expanded use of nonmember deposits

and access to the Community Development Revolving Loan Program for Credit Unions.